

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Case No. 1:97-CR-43-02

Plaintiff,

HON. RICHARD ALAN ENSLEN

v.

ALEX CRUZ,

Defendant.

ORDER

Defendant brings this Motion pursuant to Federal Rule of Civil Procedure 60(b)(6) and requests relief from this Court's Order denying Defendant's Motion for Federal Jurisdiction. (*See* Def.'s Mot. at 2, n.1; *see also* Dkt. Nos. 246 & 250.)¹

Upon review, Defendant has not shown any basis for relief under Rule 60(b)(6). While subsection (b)(6) permits a district court to set aside an order for "any other reasons justifying relief . . .," it applies only in "exceptional or extraordinary circumstances which are not addressed in the first five numbered sections of the rule." *Olle v. Henry & Wright Corp.*, 910 F.2d 357, 365 (6th Cir. 1990); *Hopper v. Euclid Manor Nursing Home, Inc.*, 867 F.2d 291, 294 (6th Cir. 1989). Relief pursuant to the rule is a discretionary matter as to which the district court is given broad equitable powers. *Olle*, 910 F.2d at 365. Defendant has failed to show "exceptional circumstances" warranting relief under Rule 60(b)(6). *Id.*; *See also Jinks v. AlliedSignal, Inc.*, 250 F.3d 381, 387

¹Defendant appealed the Order to the Sixth Circuit Court of Appeals. Defendant was denied a certificate of appealability by the Sixth Circuit and his appeal was dismissed. (*See* Dkt Nos. 260 & 274.) Defendant then petitioned the Supreme Court of the United States for a writ of *certiorari* regarding this issue. Defendant's petition was denied, as well as his request for rehearing. (*See* Dkt Nos. 282 & 283.)

(6th Cir. 2001); *Blue Diamond Coal. Co. v. Trustees of UMWA Combined Ben. Fund*, 249 F.3d 519, 524 (6th Cir. 2001).

Additionally, motions under subsection (6) may only be made within a “reasonable time,” which the Sixth Circuit has “determined is dependent upon the facts in a case, including length and circumstances of delay in filing, prejudice to opposing party by reason of the delay, and circumstances warranting equitable relief.” *In re: G.A.D., Inc.*, 340 F.3d 331, 334 (6th Cir. 2004) (citing *Olle*, 910 F.2d at 365). In the instant case, the Court determines that this motion was not made within a “reasonable time” because this Motion was made approximately seventeen months after the Order and after Defendant appealed the Order to the Sixth Circuit and the United States Supreme Court.

THEREFORE, IT IS HEREBY ORDERED that Defendant Alex Cruz’s Motion Pursuant to Rule 60(b) (Dkt. No. 284) is **DENIED**.

DATED in Kalamazoo, MI:
June 3, 2005

/s/ Richard Alan Enslen
RICHARD ALAN ENSLEN
UNITED STATES DISTRICT JUDGE